

REMARKS

In response to the Office Action mailed August 7, 2008, in connection with the above-identified application, Applicants elect, with traverse, Group III, claims 6 and 9, for prosecution in the above-identified application.

Applicants respectfully traverse the alleged lack of unity of invention of Group III claims 6 and 9, and Group IV, claims 7 and 8. According to the Action at page 3, allegedly, “Fallon et al. (WO 97/12964; cited in the IDS) teach a protein sequence which is required.....and a nucleic acid encoding such protein (page 61 and 62).” However, even if for the sake of argument this statement is accurate, Fallon et al. (WO 97/12964) is not prior art against the claims of the subject application. The subject application claims priority to an international application filed March 10, 2005, and a German application filed March 20, 2004. In contrast, Fallon et al. (WO 97/12964) was published on April 10, 1997, which was well after the filing date of both the international and German priority applications. Thus, Fallon et al. (WO 97/12964) is clearly not prior art against the claims of the subject application.

Accordingly, since Fallon et al. is not prior art this publication can not be relied upon to support the position that the claims of the subject application do not represent a contribution over the prior art. Since there are no other grounds for alleging lack of unity of invention, the lack of unity of invention conclusion based upon Fallon et al. (WO 97/12964) is erroneous and therefore must be withdrawn.

Furthermore, the nucleic acid sequence and expression system of Group IV, claims 7 and 8, encode the protein sequence of claim 6. Such claims share unity of invention based upon a corresponding technical feature, namely, for example, the sequence of the protein. As such, claims 6 to 9 share unity of invention and Applicants respectfully request rejoinder of the Group IV claims with the Group III claims for prosecution in the application.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP



ROBERT M. BEDGOOD

Reg. No. 43488

Tel. No. 858.509.4065

Fax No. 858 509.4010

Date: October 3, 2008
12255 El Camino Real, Suite 300
San Diego, CA 92130-4088
(619) 234-5000

CERTIFICATION UNDER 37 C.F.R. §§ 1.8 and/or 1.10*

(When using Express Mail, the Express Mail label number is *mandatory*; Express Mail certification is optional.)

I hereby certify that, on the date shown below, this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date: _____

Signature

(type or print name of person certifying)

* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.